



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to
Implement the California Renewables
Portfolio Standard Program.

Rulemaking 04-04-026
(Filed April 22, 2006)

**COMMENTS
OF THE DIVISION OF RATEPAYER ADVOCATES ON THE OPINION
ON AMENDED PETITION FOR MODIFICATION OF
DECISION 04-06-014 REGARDING STANDARD TERMS AND
CONDITIONS**

I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission's Rules of Practices and Procedure, the Division of Ratepayer Advocates (DRA) submits the following comments on the Proposed Decision (PD) on the amended petition for modification of Decision (D.) 04-06-014 regarding standard terms and conditions. The decision addresses the petitions of Pacific Gas and Electric Company (PG&E) and Southern California Edison (SCE) to reduce the numbers of certain non-modifiable standard terms and conditions (STCs) used in contracts executed to procure electricity pursuant to the Renewables Portfolio Standard (RPS) program, and eliminate other modifiable STCs. Alternatively, the petitioners requested that the Commission eliminate all modifiable STCs and convert the non-modifiable STCs into modifiable STCs.

The PD granted petitioners the relief sought, in part, by reducing the number of STCs which are non-modifiable but leaves the total number of STCs intact. Thus, the non-modifiable STCs reduced from the initial number are converted to modifiable STCs, not entirely eliminated. DRA supports the PD.

II. THE PROPOSED DECISION PRESERVES THE CORE PRINCIPLES OF THE RPS LEGISLATION

The PD retains as much of the original features of the RPS legislation as possible, delaying modifications that will assist or hinder implementation policies until future changes in law and Commission decisions make them necessary. As the PD notes, “RPS legislation requires that the Commission adopt STCs to be used by all electrical corporations in contracting for eligible renewable energy resources. (§399.14(a)(2)(D)).” (PD at p.4.)

Thus, the PD maintains more STCs as non-modifiable than the petitioners requested. It also retains other STCs as modifiable that the petitioners wanted to eliminate. DRA considers this a reasonable compromise between the parties' positions. This compromise also prevents the PD from becoming unnecessarily involved in premature disputes about renewable issues. For example, petitioners propose that STC 2, regarding the conveyance of RECs (Renewable Energy Certificates), be eliminated, or at least, be made modifiable. This would open RECs to unlimited trading, even though the Commission hasn't yet decided whether or not to do so (PD at pp.14-15). The PD states, "...it is premature to unbundle the REC in STC 2 until decisions are made in R.06-02-012."(p.15)

SB107 requires some changes in the STCs regarding the "Definition and Ownership of RECs" (Renewable Energy Certificates). One change was to replace the term "Environmental Attributes" by "Green Attributes". Another change was to modify contract language on the release of data. These have been done.

The current standard language on "assignment" includes the assumption that payment and performance obligations remain with the contract. The PD gives an example of why it is important to retain this language (PD at pp.17-18). Should the seller (the renewable generator) under-perform and owe a non-performance penalty to the buyer (a utility) and should the seller assign the contract to another party, the other party may decline to pay the penalty. The PD predicts that in this case the buyer will assign the cost of purchasing replacement energy to the ratepayers, and not to its shareholders.

Petitioners assert that sellers have found assignment unacceptable as it presents a barrier to financing. While this may be the case with some contracts and a few counter-parties, contracts PG&E and SDG&E have signed with this assignment STC show it is not fatal to the process. As the PD rightly noted, assignment is a reasonable standard term in all contracts.

III. CONCLUSION

DRA respectfully requests that the Commission adopt the PD.

Respectfully submitted,

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